

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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|-----------------------|---|-----------------------|
| GARRY RANDALL WEST, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. CIV-16-931-C |
| |) | |
| JASON BRYANT, Warden, |) | |
| |) | |
| Respondent. |) | |

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing pro se, brings this action pursuant to 28 U.S.C. § 2254 seeking a writ of habeas corpus. Petitioner has filed an Application for Leave to Proceed In Forma Pauperis [Doc. No. 2]. United States District Judge Robin J. Cauthron has referred the matter for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B) and (C).

A review of Plaintiff's Application indicates that Plaintiff is financially able to prepay the \$5.00 filing fee of this proceeding. Because Plaintiff has not shown that he qualifies for authorization to proceed without prepayment of the filing fee, it is recommended that Plaintiff's Application be denied. *See* 28 U.S.C. § 1915(a)(1); *see also* *Lister v. Department of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005).

It is further recommended that if Plaintiff does not pay the \$5.00 filing fee in full to the Clerk of the Court within twenty-one days of any order adopting this Report and Recommendation, that this action be dismissed without prejudice to refiling, pursuant to LCvR 3.3(e).

NOTICE OF RIGHT TO OBJECT

Petitioner is advised of his right to object to this Report and Recommendation. *See* 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Any such objection must be filed with the Clerk of the

Court on or before September 8, 2016. Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of the factual and legal issues addressed herein. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

ENTERED this 18th day of August, 2016.

A handwritten signature in blue ink, appearing to read "B.M.J.", is written above a horizontal line.

BERNARD M. JONES
UNITED STATES MAGISTRATE JUDGE